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ALJ

SERVICE DATE AUGUST 27, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36836

NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION OF CONTROL—
NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY

**ORDER EXPEDITING REPLY TO MOTION TO COMPEL AND
REQUIRING MEET AND CONFER**

Decided: August 27, 2025

This discovery matter is before the undersigned pursuant to a ruling by the Surface Transportation Board. See Decision No. 9 (Aug. 8, 2025).

Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS or Applicants) seek Board review and authorization pursuant to 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 of their acquisition of control of Norfolk & Portsmouth Belt Line Railroad Company (NPBL).

On August 15, 2025, NS filed a Motion to Compel against the Port of Virginia (POV) (including the Virginia Port Authority (VPA), and the Virginia International Terminals, LLC (“VIT”)). On August 18, 2025, VPA and VIT submitted a letter that they would reply to NS’s motion in compliance with the Board’s rules (*i.e.*, until September 4, 2025) and to NS’s discovery requests. On August 26, 2025, NS submitted a letter that VPA and VIT did not respond to discovery but objected to NS’s reformulated discovery requests that VPA and VIT are not parties. NS Letter at 2.

In short, NS argues that VPA/POV became a party of record with its various filings on March 5, 2025. E.g., Motion at 2 n.1. NS argues that VPA and Virginia International Terminals, LLC (“VIT”), a single member limited liability company wholly owned by the VPA, do “business as The Port of Virginia (“POV”).” Motion at 3 n.2. NS explains that NS requests that POV, VPA, and VIT be compelled to respond to NS’s discovery. Motion at 6.

The Surface Transportation Board regulations provide for broad discovery. These regulations provide that “[p]arties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). The Board has recognized that this regulation allows for broad discovery. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 7), FD 36500, slip op. at 4 (Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under

49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery “[b]roadly”); CSX Transp. & Del. & Hudson Ry.—Joint Use Agreement, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (parties are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding and relevance means that information might be able to affect the outcome of a proceeding) (citing 49 C.F.R. § 1114.21).

Despite this broad language, the Board has slightly restricted discovery where it seeks extraordinarily sensitive commercial, competitive, or confidential materials. The Board has held that the “[d]isclosure of extraordinarily sensitive information should not be required without a careful balancing of the seeking party’s need for the information, and its ability to generate comparable information from other sources, against the likelihood of harm to the disclosing party.” CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., FD 33388, slip op. at 3 (STB served Nov. 10, 1997).

Again, NS argues VPA, POV, and VIT should be considered the same entity and a party in this proceeding. NS argued that VPA and VIT claimed that NS had not served the proper party, and thus NS reformulated and resubmitted its discovery requests. NS Letter at 2. However, VPA and VIT apparently refused to respond to those discovery requests. See id.

The Board’s referral to the undersigned states: “The parties are encouraged to cooperate on discovery matters and resolve any disputes promptly.” Decision No. 9 at 2. That language is not intended to apply strictly to “parties of record” only. Rather, prompt and cooperative resolution of discovery matters is encouraged always.

To be clear, this order does not decide the party status of VPA, POV, and VIT.

However, this proceeding is nearing the end of its discovery phase. Accordingly, this ALJ requires that NS and VPA, POV, and VIT **meet and confer** in an effort to resolve the issues raised in NS’s Motion to Compel on or before Friday, August 29, 2025.

If NS’s Motion to Compel is not resolved, in full, then VPA, POV, and VIT must file any Reply to NS’s Motion to Compel by Tuesday, September 2, 2025.

If NS, VPA, POV, and VIT are in **good faith** working to resolve the issues in the Motion to Compel, they can jointly agree to extend the deadlines herein. However, no later than Thursday, September 4, 2025, NS must file a Letter Notifying the ALJ that the Motion to Compel is resolved and moot.

For these reasons, the undersigned **GRANTS IN PART** NS’s request for expedited treatment of the Motion to Compel against the Port of Virginia (POV) (including the Virginia Port Authority (VPA), and the Virginia International Terminals, LLC (“VIT”).

It is ordered:

1. NS and VPA, POV, and VIT shall meet and confer on or before **Friday, August 29, 2025.**

2. If NS's Motion to Compel is not resolved, in full, then VPA, POV, and VIT must file any Reply to NS's Motion to Compel by **Tuesday, September 2, 2025.**

3. This decision is effective on the date of service.

By the Board, Jenifer J. Soulikias, Administrative Law Judge.